

DONLY GRAY

IBLA 83-884

Decided July 11, 1984

Appeal from decision of the Nevada State Office, Bureau of Land Management declaring null and void ab initio placer mining claims NMC 122165 and NMC 122166.

Affirmed.

1. Mining Claims: Lands Subject to

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is patented are properly declared null and void ab initio.

APPEARANCES: Donly Gray, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Donly Gray appeals a July 20, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring Delta Placer #1 mining claim, NMC 122165, and Delta Placer #3 mining claim, NMC 122166, null and void ab initio because both claims were located on land which was previously patented out of Federal ownership without reservation of minerals.

The subject mining claims were located on July 14, 1967, and February 12, 1968, respectively, along Six Mile Creek in the W 1/2 SW 1/4 sec. 30, T. 17 N., R. 22 E., Mount Diablo meridian, Storey County, Nevada. Copies of the recorded certificates of location for each were filed with BLM on October 22, 1979. After conducting a review of its records, BLM declared Delta Placer claims #1 and #3 null and void ab initio because the records indicate that the lands were patented without a reservation of minerals to the United States.

In his statement of reasons for appeal, Gray does not rebut BLM's conclusion that the land was transferred out of Federal ownership without mineral reservation. Rather, he asserts that during the 16 years since he filed a certificate of location for the claims he has done the location work and annual labor. He contends that no one has contested the claims prior to the BLM decision under appeal. 1/

1/ Although the claims were recorded in Storey County, Nevada, in 1967 and 1968, they were not recorded with BLM until Oct. 22, 1979, pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

[1] It is well established that the Department has no jurisdiction over mining claims located on lands patented without reservations of minerals to the United States. Nels Swanberg, 74 IBLA 249 (1983); Harry J. Pike, 67 IBLA 100 (1982). Therefore, mining claims located under the general mining laws on land patented without mineral reservation are null and void ab initio. Floyd Benton, 62 IBLA 243 (1982).

The official land status plat for T. 17 N., R. 22 E., Mount Diablo meridian discloses that the land at issue, W 1/2 SW 1/4 sec. 30, was patented without mineral reservation. A copy of the patent shows that it was granted August 5, 1872, under the Act of April 24, 1820, without a reservation of any mineral rights. 2/

Thus, according to the official land records, the land Gray has located his claims upon was outside the control or jurisdiction of the Department when the claims were located. Under these circumstances, the Department has no authority to recognize his location attempts under the general mining laws. 3/ Appellant has failed to show factual or legal error in BLM's determination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge.

2/ It was not until 1909 that Congress provided for separation of the mineral estate and mandatory reservation thereof in public land patents. See generally United States v. Union Oil Company of California, 549 F.2d 1271, 1275 (9th Cir. 1977), cert. denied, 434 U.S. 930 (1978) (discussion of history and rationale for separation of the estates in patents).

3/ The recordation with BLM of an unpatented mining claim by itself does not render valid any claim which would not otherwise be valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law. 43 CFR 3833.5(a). Further, failure of the BLM to notify an owner upon his filing or recording of a claim that such a claim is located on lands not subject to location shall not prevent BLM from later declaring the claim void. 43 CFR 3833.5(f); William C. Reiman, 54 IBLA 103 (1981).

